



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/173897

PRELIMINARY RECITALS

Pursuant to a petition filed April 26, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance (MA), a hearing was held on June 07, 2016, at Sheboygan, Wisconsin.

The issue for determination is whether The Department of Health Services, Division of Health Care Access and Accountability (DHS), correctly denied the request of [REDACTED] [REDACTED] [REDACTED] to provide personal care (PCW) services to the Petitioner.

NOTE: The record was held open until June 10, 2016, to give Petitioner an opportunity to submit additional medical documentation. On June 9, 2016, the Petitioner submitted a fax that contained a physical therapy progress note (pages 2 of 3 and 3 of 3), a discharge summary (1 page), and an Internal Medicine Progress note (Pages 1 of 4, 2 of 4 and 3 of 4). They have been marked as Exhibits 4, 5 and 6, respectively.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Interpreter: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. On January 13, 2016, [REDACTED] (herein after referred to as [REDACTED]) completed a Personal Care Screening Tool (PCST) and determined the Petitioner needed assistance with his activities of daily living as follows:

Task	Level of Need	Maximum Time Allowed by Personal Care Activity Time Allocation Table ¹ / requested on PCST
Bathing	Level D	30 minutes per day
Dressing Upper Body and Lower Body	Level D	20 minutes per day
Grooming	Level D 2x per day	10 minutes per day
Eating	Level C 2x per day	10 minutes per day
Mobility	Level C	20 minutes per day
Toileting	Level B	zero minutes per day
Transferring	Level C	30 minutes per day
Medically Oriented Task – Medication Reminders	Level B; twice per day	zero minutes per day
Total before Incidental Tasks		120 minutes per day
Incidental Tasks = ¼ of total ADL time		30 minutes per day
Total PCW time per PCST		150 minutes per day = 2.5 hours per day = 17.5 hours per week

(Exhibit 3, pgs. 24-29)

3. On February 2, 2016, [REDACTED] submitted, on behalf of the Petitioner, a request for prior authorization to provide PCW services to the Petitioner. [REDACTED] requested 77 units/19.25 hours per week for 53 weeks at cost of \$26,106.25. (Exhibit 3, pg. 12)
4. On March 15, 2016, DHS sent the Petitioner and [REDACTED] notices advising them that DHS had denied [REDACTED]'s request to provide PCW services to Petitioner. (Exhibit 3, pgs. 78-81)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 26, 2016. (Exhibit 1)
6. Petitioner is 65 years old, and lives with family. (Exhibit 3, pg. 24)

¹The Personal Care Activity Time Allocation Table can be found on-line at:

<https://www.forwardhealth.wi.gov/WIPortal/Subsystem/KW/Display.aspx?ia=1&p=1&sa=47&s=3&c=565#PCSTAllocationTable>

7. Petitioner had a stroke in 2012. He is diagnosed with type 2 diabetes, high cholesterol, high blood pressure, GERD, anemia, and anxiety. (Exhibit 3, pgs. 25, 47 and 52)

DISCUSSION

Personal Care Services are a covered service by Medicaid. They are defined as, “medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care.” *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient’s medical condition or to maintain a recipient’s health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;

4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, [REDACTED], completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located, under topic number 3165 on the Forward Health website:

<https://www.forwardhealth.wi.gov/WIPortal>

In general, seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), if any, are examined.

The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table. The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165.*

The letter from the Office of the Inspector General indicated that DHS denied [REDACTED]'s request to provide services to Petitioner, because the medical documentation provided to DHS did not support a need for PCW services. (See Exhibit 2)

Bathing

The January 13, 2016, PCST indicated that the Petitioner needed assistance with bathing, because he is unable to get in and out of the tub and because he is unable to shampoo his head or wash his back due to low back pain, right arm weakness and knee pain.

A progress note from a January 8, 2016 medical appointment indicates that Petitioner has right side weakness due to a stroke, but that Petitioner's, "conditions have been well controlled..." and that the Petitioner, "denies any knee, back or other joint pain". (Exhibit 2, attachment 5; Exhibit 3, pg. 54) That same progress notes that Petitioner's joints are, "without effusion [accumulation of fluid], warmth or tenderness."

A February 19, 2016 physical therapy evaluation indicated that the Petitioner's range of motion in his upper extremities were within normal limits (WNL) at all joints – shoulder, elbow, wrist and hand. (Exhibit 3, pg. 66)

Because Petitioner's medical records do not support the information in the PCST, it is found that DHS correctly determined that PCW services for the task of bathing do not meet the definition of medically necessary services, as that is defined in Wis. Adm. Code. §DHS 101.03(96m).

Dressing

The January 13, 2016, PCST indicated that the Petitioner needed assistance with dressing, because he has low back pain, right arm weakness and knee pain. The PCST also indicated that the Petitioner needs constant supervision for fall and safety precautions.

Again, the record does not support the medical necessity for PCW assistance with the task of dressing.

First, supervision is not considered a covered personal care service under upon Wis. Admin. Code §DHS 107.112(1)(b):

(1) COVERED SERVICES.

(b) Covered personal care services are:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Second, as discussed above, the Petitioner's medical records indicate that the Petitioner has not had issues with joint pain or swelling and that his range of motion in his upper extremities is within normal limits.

In addition, a February 19, 2016 physical therapy progress note indicated that the Petitioner reported no falls, and that he had been practicing walking without shuffling and "thinks it is easier". At that same visit, the Petitioner reported being independent with his activities of daily living, although his wife cooks for him and does his laundry. (Exhibit 3, pg. 69).

Based upon the foregoing, is found that the record does not support a need for PCW assistance with dressing at this time.

The Petitioner's daughter expressed concerns about Petitioner's safety, because the Petitioner fell over in January 2016 while putting on his shoes. Petitioner's daughter should note that there are assistive devices that might help the Petitioner get his shoes on safely and independently, and that ForwardHealth covers a variety of assistive devices.

Grooming

The January 2016 PCST indicates that the Petitioner needs assistance with grooming at level D, because he needs assistance with set up, and on his worst days, he needs assistance with brushing his hair and shaving. The Petitioner's daughter testified that the Petitioner is able to perform grooming tasks, but just needs help with set up.

As discussed above, Petitioner's medical records indicate the Petitioner is independent with his activities of daily living; they indicate that he has no joint swelling or pain, and they indicate he has normal range of motion in his upper extremities, including his hands.

The occupational therapy evaluation indicated that the Petitioner had, “no significant fine motor coordination deficits” and that his upper extremity strength scored 5 of 5 in all joints, though his right grip strength was less than his left hand grip strength. (Exhibit 3, p. 66)

Based upon the foregoing, it is found that the record does not support the need for PCW assistance with grooming and that DHS correctly denied PCW time for the task of grooming.

Eating

The PCST indicated that the Petitioner needed assistance with eating a level C, because he is unable to prepare his own meals, due to his forgetfulness and because he needs help setting up his plate. The Petitioner’s daughter testified that the Petitioner is able to feed himself, but does need help with set-up.

Per page 7 of the PCST instructions, “eating” means, “the ability to use conventional or adaptive utensils to ingest meals by mouth. Do not select eating if only assistance with meal preparation is needed...” The PCST instructions can be found on-line at:

<http://www.dhs.wisconsin.gov/forms/F1/F11133a.pdf>

As discussed above, the February 19, 2016 physical therapy progress noted indicated that the Petitioner reported being independent with his activities of daily living, although his wife cooks for him and does his laundry. (Exhibit 3, pg. 69). There is nothing in the medical records that would explain why the Petitioner is unable to set up his own plate. In addition, while the Petitioner might not be able to use a stove to cook a meal, due to concerns that he might leave the stove on, it is unclear why he would not be able to perform simple meal preparation, such as microwaving food, or making a sandwich. As such, there is insufficient information in the record to support a need for PCW assistance with the task of eating.

Mobility

The PCST indicated that the Petitioner needs assistance at level C with mobility because he needs constant supervision for fall precautions. Petitioner’s daughter testified that the Petitioner has near falls every day, because he drags his right foot. However, as discussed above, under dressing, Medicaid does not cover supervision as a PCW service.

In addition, a February 26, 2016 progress states that the Petitioner reported that his mobility improved, after some therapy. (Exhibit 3, pg. 47) The Petitioner was noted to have improvement in walking and was able to self-correct his gait. (Exhibit 3, pg. 70) As of February 19, 2016, the Petitioner reported having no falls. (Exhibit 3, pg. 68) and it appears any issues with dizziness resolved. A March 2016 discharge summary indicated the Petitioner had no dizzy spells after being placed on Meclizine and a follow up progress note indicated that the Petitioner “improved as expected” and was no longer dizzy. (Exhibits 5 and 6)

Based upon the foregoing it is found that the record does not support a need for PCW assistance with mobility, at this time.

Toileting

The PCST indicated that the Petitioner needs assistance with toileting at level B. According to the Personal Care Activity Time Allocation table, no PCW time is allowed for individuals who might need assistance at level B. I note that at the hearing, the Petitioner’s daughter testified that the Petitioner is able to use the bathroom on his own and that he does not have issues with incontinence. As such, it is found that PCW assistance with toileting is not medically necessary.

Transfers

The PCST indicated that the Petitioner needs assistance with transfers at level C. The Petitioner's daughter indicated that he is able to complete transfers, such as getting out of bed, on his own, but that he moves slowly and so, needs help.

Per page 2, of the PCST instructions, "Regardless of the time it takes the member to perform the task safely, with or without the use of an assistive device, the screener should select the response that indicates the member is able to perform the task (i.e. is independent with the task). Do not select the response indicating the need for 'partial physical assistance' with a task when the only assistance needed his help for performing the task more quickly."

As such, time for PCW assistance with transfers is not allowed in this case. I note that nothing in the medical records provided by the parties indicates a need for assistance with transfers.

Medically Oriented Tasks

Under Medically Oriented Tasks (MOTs), the PCST indicated that the Petitioner needs assistance with medication reminders at level B. According to the Personal Care Activity Time Allocation table, no PCW time is allowed for individuals who might need assistance at level B.

I note that Petitioner's speech evaluation indicated that the Petitioner has issues with his working (short term) memory and deficits in his cognitive linguistic skills. (Exhibit 3, pg. 74) However, no issues or difficulties with medication compliance were noted in Petitioner's medical records.

Based upon the foregoing, it is found that there is insufficient information in the record to support a need for PCW assistance with medically oriented tasks.

In summary, DHS correctly denied [REDACTED]'s request to provide PCW services to the Petitioner.

Petitioner's family indicated that the Petitioner has been through a lot since his stroke in 2012 and that he has had difficulty coping with the aftermath of the stroke. The Petitioner's daughter indicated that the Petitioner is afraid he will suffer another stroke and that he is afraid to be home alone.

The Petitioner is encouraged to contact the Sheboygan County Aging and Disability Resource Center (ADRC) to find out about other programs that might be available to help her father.

Sheboygan County ADRC
(920) 467-4100
toll free (800) 596-1919
650 Forest Avenue
Sheboygan Falls, WI 53085
ADRC@sheboygancounty.com

<http://www.sheboygancounty.com/government/departments-f-q/health-and-human-services/aging-and-disability-resource-center>

Petitioner should be aware that if [REDACTED] can show a medical need for PCW services, it can always submit a new prior authorization request with medical evidence to show the need for the services.

I note to the Petitioner that his provider, [REDACTED] will not receive a copy of this Decision. The Petitioner might wish to share this decision with his provider.

CONCLUSIONS OF LAW

DHS correctly denied the request of [REDACTED] to provide personal care (PCW) services to the Petitioner.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

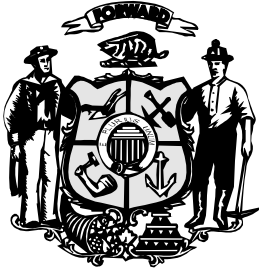
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of June, 2016

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 30, 2016.

Division of Health Care Access and Accountability